

REMARKS

The election/restriction requirement has been carefully reviewed. Restriction to one of the following inventions was required under 35 U.S.C. 121: (I) Claims 1-16, drawn to a method of separating a sample, classified in class 436, subclass 545; (II) Claims 17-38, drawn to a method of analyzing a sample, classified in class 435, subclass 7.1; (III) Claims 39-60, drawn to a method of collecting a sample, classified in class 436, subclass 518; and (IV) Claims 61-63, drawn to a method of detecting multiple analytes by exposing a pooled population of particles, classified in class 436, subclass 525.

The Office Action stated that the inventions were distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are drawn to different methods, which require different steps (detecting step in invention II). One is a method of separating; the other is a method of analyzing a sample. Thus, both methods have different modes of operation, different effects and different functions. These methods also are not disclosed as capable of use together. Inventions I and III are unrelated because invention III is a method of collecting the sample, which has a step of collecting the sample. This step causes a different effect, mode of operation, and function in the method of invention III. Inventions I and IV are unrelated because the method of invention IV is a method of detecting multiple analytes vs. the method of invention I which is a method of separating the sample. These two methods are not capable of use together and have different modes of operation, functions and effects. Inventions II and III are two different methods which are not capable of use together, have different effects, modes of operation and functions. The method of invention II requires a detecting step while the method of invention III is a method of collecting the sample, which does not require a detecting step. The same reason applies to the relationship between invention III and IV. Inventions II and IV have different modes of operation, effects and functions and are not capable of use together because invention IV detects multiple analytes while invention II detects single analytes. A special detector must be

used to detect multiple analytes and preparation of multiple reagents must be performed as to compare with the requirements of the method of detecting a single analyte. Such difference would result in different modes of operation, effects and functions.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. Further, because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II, III or IV, restriction for examination purposes as indicated is proper. Although inventions II, III or IV belong to the same class, they are in separate subclasses, which would result in a search burden. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicants hereby elect Group I, claims 1-16 without traverse. A favorable action is solicited.

Respectfully submitted,

Date: September 15, 2004



Signature of Attorney

Reg. No. 30,620
Phone (505) 667-9168

Bruce H. Cottrell
Los Alamos National Laboratory
LC/BPL, MS D412
Los Alamos, New Mexico 87545